

# **WITCHCRAFT ACCUSATION AND THE CHALLENGES RELATED THERETO: CAN SOUTH AFRICA PROVIDE A RESPONSE TO THIS PHENOMENON EXPERIENCED IN TANZANIA?**

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## **SUMMARY**

Witchcraft accusation is among the cultural beliefs that infringe women's rights in Tanzania. Women in Tanzania are disproportionately accused of witchcraft compared to their male counterparts. These beliefs have led to intimidation, psychological isolation, abuse, violence and in extreme cases the killing of women who are accused of witchcraft whenever a natural disaster befalls the community. This article examines the gender-based nature of witchcraft accusation and the conditions that have led to the vulnerability of women due to this practice in Tanzania. It also examines how the Tanzanian legal system has dealt with the challenges of witchcraft accusation to date. A reflection on the stance maintained by the South African Law Commission in addressing this problem is considered. This has been necessary to determine whether there are any practical solutions that may be emulated or adapted by the Tanzanian Reform Commission. The article concludes that it is the duty of the State, regardless of people's political, economic and cultural beliefs, to protect all human rights and fundamental freedoms. The law in Tanzania should therefore be reformed to ensure that the gender-violence phenomenon is adequately addressed. It is also submitted that it is necessary for the law to address witchcraft accusation practices across the African continent.

## **1 INTRODUCTION**

Witchcraft is a term that refers to any influence of an individual possessing magical power on another person's property, mind or body contrary to that

other person's will.<sup>1</sup> Witchcraft practices include belief in magical powers such as the power to call up the spirit of a dead man, the ability to diagnose and cure illnesses, the ability to change from a human being into an animal, and the ability to cause and stop road accidents.<sup>2</sup> It is believed that magic users have the power to cause disease in humans, misfortune, sickness in animals, impotence, sudden death, and other forms of misfortune.<sup>3</sup> This cultural practice causes people to suspect others of engaging in witchcraft, which results in attacks on those suspected of witchcraft.<sup>4</sup> History has revealed that, before colonial rule, witchcraft beliefs formed an integral part of everyday life in most African societies.<sup>5</sup> As such, numerous tenets of customary law had to provide sanctions aimed at restitution, depending on the harshness of the abuse caused by witchcraft.<sup>6</sup> However, beliefs in witchcraft persist, and these beliefs affect all classes of society and remain a social reality in Tanzania and many other African countries such as Ghana, Angola, Malawi and South Africa. The problem with these beliefs is that they are used to justify the stigmatisation of certain people in society, which often leads to accusations against and victimisation of individuals who are suspected of being involved in the acts of witchcraft.<sup>7</sup>

People who suspect that they are the victims of witchcraft seek the services of either a traditional healer or witch doctor to determine the identity of the person who has harmed them by engaging in witchcraft practices.<sup>8</sup> Members of certain communities also tend to hire a traditional healer to break the spell of bewitchment within their community. This procedure is well known as "operations to remove the source of the bewitchment".<sup>9</sup> Accusers often demand that a witch undergo an exorcism, or some other procedure designed to purge her of her powers. Exorcisms are painful and dangerous because the communities often impose punishments on the accused witch, including mob violence, beatings, property destruction, or other extreme measures.<sup>10</sup> A wide range of women's rights are violated as a consequence of witchcraft accusations, including the right to life, security, and liberty as

<sup>1</sup> Malowany "Unfinished Agendas: Writing the History of Medicine of Sub-Saharan Africa" 2000 99(395) *African Affairs* 325–349; Ashforth "Of Secrecy and the Commonplace: Witchcraft and Power in Soweto" 1996 63(4) *Social Research* 1183–1234.

<sup>2</sup> Machangu "The Vulnerability of Elderly Women to Witchcraft Accusations Among the Fipa of Sumbawanga" 2015 16(2) *Journal of International Women's Studies* 274–284; Auslander "Open the Wombs! The Symbolic Politics of Modern Ngoni Witchfinding" in Comaroff and Comaroff (eds) *Modernity and Its Malcontents* (1993) 177–183.

<sup>3</sup> *Ibid.*

<sup>4</sup> Miguel "Poverty and Witchcraft Killing" 2005 72(1) *Review of Economic Studies* 153–172.

<sup>5</sup> Mesaki "Review of Witchcraft and the Law in Tanzania" 2010 1(8) *International Journal of Sociology and Anthropology* 132–132; Kibuga and Dianga "Victimisation and the Killing of Older Women: Witchcraft in Magu District, Tanzania" 2009 9(2) *Southern African Journal of Gerontology* 29–32.

<sup>6</sup> Legal and Human Rights Centre *Tanzania Human Rights Report 2014* (2015) 107.

<sup>7</sup> Mesaki 2010 *International Journal of Sociology and Anthropology* 132.

<sup>8</sup> Tebbe "Witchcraft and Statecraft: Liberal Democracy in Africa" 2007 96 *The Georgetown Law Journal* 183–195; World Health Organization "Traditional Medicine" World Health Organization Media Centre (*Fact Sheet No. 134* 2003).

<sup>9</sup> HelpAge International Tanzania *Ngo Thematic Shadow Report on Older Women's Rights in Tanzania* Report submitted to the 41st session of the Committee on CEDAW in relation to Tanzania's combined fourth, fifth and sixth periodic report of State parties, CEDAW/C/TZA/6 (16 April 2007) 4.

<sup>10</sup> Machangu 2015 *Journal of International Women's Studies* 274.

well as the right to hold property, and the prohibition against torture. Moreover, socio-economic marginalisation of those blamed for the practice of witchcraft also occurs. Anger, hatred, envy, lust and greed have been identified as among the sources of this belief and practice.<sup>11</sup> Those most frequently attacked have been women – particularly lower class and elderly women, most of whom are farmers, usually single and generally living alone. In urban areas, female traders have also been targeted and accused by men who clearly perceive them as competitors and a threat to their power.<sup>12</sup> The abuses inflicted on women accused of witchcraft serve to intimidate and “discipline” all women, thereby preventing them from asserting their rights.<sup>13</sup>

This article explores the gendered and biased nature of witchcraft accusation and highlights how this harmful practice infringes the rights of women in Tanzania. The first part of the article illustrates how witchcraft accusation practices affect women while the second part focuses on possible solutions to alleviating the problem experienced in Tanzania. The aim therefore is to ascertain whether the current legal initiatives in South Africa are adequate to protect the rights of women against the abuse that is associated with witchcraft accusation. The South African position is therefore considered as a way forward for reform of the law in Tanzania.

## 2 WITCHCRAFT ACCUSATION – A GENDER PHENOMENON IN AFRICA

Witchcraft accusation has been viewed as gender specific, not only in Africa, but all over the world as the victims have mainly been women. History has revealed that during the so-called “witch-hunts” in Europe from 1450 to 1650, between 75 and 80 per cent of those accused of witchcraft were poor elderly widows and women.<sup>14</sup> Likewise, women were also the main victims of the infamous 1692-to-1693 Salem witch trials in colonial Massachusetts.<sup>15</sup> This pattern of gendered accusation continues in various regions around the world, including Papua New Guinea, the Andean regions of South America, India, Nepal, and Western Bengal.<sup>16</sup> The practice of witchcraft accusation is a gendered phenomenon in many parts of Africa such as Zambia, Ghana, Malawi and South Africa.<sup>17</sup> It is reported that of the 45 witchcraft cases

<sup>11</sup> Miguel 2005 *Review of Economic Studies* 132; Jangu *Healing Environmental Harms: Social Change and Sukuma Traditional Medicine on Tanzania’s Extractive Frontier* (doctoral thesis, University of Michigan) 2012.

<sup>12</sup> HelpAge International Tanzania Report submitted to the 41st session of the Committee on CEDAW 01–12.

<sup>13</sup> Federici “Women, Witch-Hunting and Enclosures in Africa Today” 2010 3 *Sozial. Geschichte* 10 12.

<sup>14</sup> Miguel 2005 72 *Review of Economic Studies* 154.

<sup>15</sup> Drucker-Brown “Mamprusi Witchcraft, Subversion and Changing Gender Relations” 1993 63 *Africa: Journal of the International African Institute* 531 537.

<sup>16</sup> Puja “Sanctioned Violence: Development and the Persecution of Women as Witches in South Bihar” 1998 8(2) *Development in Practice* 136 136; Crisp “Witchcraft and Displacement” 2008 31 *Forced Migration Review* 74.

<sup>17</sup> Van Steenberg “UN Report on Ageing Highlights How Traditional Practices Have Resulted in the Deaths of Thousands of Older Women” (2012-10-01) *The Guardian*; Women and Religion in Africa “Gender & Power: Yoruba, Maasai, Igbo” *Women and Religion in Africa Research Portal* (2013).

referred to a legal aid clinic in Malawi, only four involved accusations of witchcraft against an adult male.<sup>18</sup> In the vast majority of cases, the alleged witch was either an older woman or a female child.<sup>19</sup> In Ghana, more than 5 000 women have been driven from their communities and banished to witch camps, but there are no such camps or designated facilities for men who choose to practise witchcraft.<sup>20</sup> The tension in polygamous marriages has been labelled as sowing the seeds of witchcraft in countries like Swaziland.<sup>21</sup>

Many countries have managed to revise their witchcraft laws. For example, in 2006, Zimbabwe recognised the existence of witchcraft and criminalised groundless accusations of witchcraft and all of its practices that caused harm to others under its criminal law.<sup>22</sup> Other African countries such as Cameroon have also chosen to subordinate state legal norms to norms underlying popular beliefs in local cultures by readily accepting at face value evidence from the community regarding suspicions and accusations of witchcraft.<sup>23</sup> Under the Cameroonian legal system, the question of proof in identifying who is a witch may lie almost exclusively with the courts.<sup>24</sup> Nevertheless, despite these initiatives, in other African countries such as Tanzania, killings related to witchcraft have continued to claim the lives of many innocent people. The circumstances surrounding these attacks are examined more fully below.

### 3 WITCHCRAFT ACCUSATION PRACTICES IN TANZANIA

Witchcraft accusation is a gender issue in Tanzania. Although witchcraft is practised by both women and men, women are more likely to be accused of witchcraft than their male counterparts.<sup>25</sup> Accusations of witchcraft against elderly women have been recognised by the Tanzanian government as a serious problem that causes death and economic decline.<sup>26</sup> The appearance of “red eyes” is considered to be a sign of engaging in witchcraft practices.<sup>27</sup> However, most elderly women in rural areas use firewood for cooking and,

<sup>18</sup> Machangu 2015 *Journal of International Women's Studies* 278.

<sup>19</sup> IRIN “Child Witchcraft Allegations on the Rise” 2010 *IRIN* 1.

<sup>20</sup> Mgbako, Chi-Adanna and Glenn “Witchcraft Accusations and Human Rights: Case Studies from Malawi” 2011 43 *George Washington International Law Review* 389 392.

<sup>21</sup> Meel “Gender-Related Traumatic Deaths in Transkei: Incidence and Causes” 2003 43(3) *Med Sci Law* 215–220.

<sup>22</sup> S 9 of the Zimbabwe Criminal Law Act 23 of 2004 (Codification and Reform).

<sup>23</sup> Quarmyne “Witchcraft: A Human Rights Conflict Between Customary/Traditional Laws and the Legal Protection of Women in Contemporary Sub-Saharan Africa” 2011 17 *William & Mary Journal of Women & Law* 475 478.

<sup>24</sup> S 251 of the Cameroon Penal Code 007 of 2016.

<sup>25</sup> UN Economic and Social Council, Communication on Human Rights, Integration of the Human Rights of Women and the Gender Perspective 1 46, U.N. Doc. E/CN.4/2002/83 (2002-01-31).

<sup>26</sup> Msuya *Harmful Cultural and Traditional Practices: A Roadblock in the Implementation of the Convention on the Elimination of Discrimination against Women and the Maputo Protocol on Women's Rights in Tanzania* (doctoral thesis, University of KwaZulu-Natal) 2017 164.

<sup>27</sup> Yikoniko “When Ageing Becomes a Curse” (2015-08-02) *The Sunday Mail*; Kibuga and Dianga 2009 *Southern African Journal of Gerontology* 29–32.

as a consequence, their eyes become red over time. Therefore, they have been wrongly accused of practising witchcraft.<sup>28</sup> This gender bias problem has resulted in the marginalisation of elderly women in society.

Targeting women in witchcraft killing is also associated with the ownership of property.<sup>29</sup> Past and recent experiences confirm that there is a relationship between poverty and the vulnerability of elderly women in terms of accusations of witchcraft in Tanzania, because most killings of elderly women occur in poor rural areas where people are largely dependent on crop production.<sup>30</sup> Increasing poverty has led to an increase in illiteracy among people in rural villages; this has steered many people to believe that calamities such as drought, famine, pests and diseases are caused by poor elderly women who do not want to see the progress of younger energetic ones.<sup>31</sup> Evidence has shown that a drop in income from crops owing to different calamities is associated with a large increase in the killing of elderly women who are accused of witchcraft.<sup>32</sup> Moreover, people in rural areas lack the funds to visit hospitals or clinics, so it is likely that a patient in these areas will seek medical aid from a traditional healer first. These traditional healers have their own code of ethics and conduct and their influence on the local population is profound. Patients believe implicitly in the words of their healers and adhere rigidly to whatever they are told about the source of their illness.<sup>33</sup> Trust in traditional healers is also enforced by lack of sufficient hospital services, as in many areas people have to walk more than ten kilometres to seek medical care.<sup>34</sup> The lack of understanding of common diseases such as HIV and Aids and other childhood diseases in rural areas is also considered to be among the factors that result in the belief that a family has been bewitched.<sup>35</sup>

As alluded to, disputes over property and inheritance are among the underlying causes of witchcraft allegations and violence against elderly women. Elderly women who have immovable property such as land and houses have become more vulnerable to attacks and killings as witchcraft is used as an excuse to obtain their property.<sup>36</sup> There are instances where elderly women have been maliciously accused of being witches and they have been killed in order to be deprived of properties left to them by their

<sup>28</sup> Schnoebelen *Witchcraft Allegations, Refugee Protection and Human Rights: A Review of the Evidence* Research Paper No.169 United Nations High Commission for Refugees New York (2009) 3.

<sup>29</sup> Legal and Human Rights Centre *Tanzania Human Rights Report 2014* (2015) 107.

<sup>30</sup> Machangu 2015 *Journal of International Women's Studies* 276; Msuya "Tradition and Culture in Africa: Practices that Facilitate Trafficking of Women and Children's Dignity" 2017 2(3) *Journal on Sexual Exploitation and Violence* 16.

<sup>31</sup> Miguel 2005 72 *Review of Economic Studies* 154.

<sup>32</sup> Green "Discourses on Inequality: Poverty, Public Bads and Entrenching Witchcraft in Post-Adjustment Tanzania" 2005 5(3) *Anthropological Theory* 249; Beattie "Witchcraft and Sorcery in a Gusii Community" in LeVine (ed) *Witchcraft and Sorcery in East Africa* (1963) 104-127.

<sup>33</sup> Machangu 2015 *Journal of International Women's Studies* 277.

<sup>34</sup> *Ibid.*

<sup>35</sup> Miguel 2005 72 *Review of Economic Studies* 154. Auslander in Comaroff and Comaroff *Modernity and Its Malcontents* 177-183.

<sup>36</sup> Green 2005 *Anthropological Theory* 247 249.

husbands.<sup>37</sup> What is most disturbing is that those who have been killed in such circumstances are often close relatives of the perpetrators, including their own sons.<sup>38</sup> As many as 3 693 persons were killed on suspicion of being witches between 1970 and 1980. While there is no reliable data between 1980 and 1990, between 1990 and 2010, the number had risen to an alarming 23 000 deaths.<sup>39</sup> Eighty per cent of those who were accused and killed during these periods were women. Of those killed in 2013, 505 were women while 260 were males.<sup>40</sup> The Tanzania Human Rights Report of 2017 revealed that from 2014 to 2016, 1 360 killings related to witchcraft were reported to the police.<sup>41</sup> From January to June 2017, so-called “witch killings” claimed 479 lives.<sup>42</sup>

For the first time in 2017, a Tanzanian court charged a mob for witch killings; 32 people were responsible for killing 5 women suspected of witchcraft in Western Tabora. Some of the accused were the leaders of a local militia.<sup>43</sup> Nearly 500 women accused of witchcraft were killed by mob justice in the first six months of 2017.<sup>44</sup> Current statistics on witchcraft-related killings in Tanzania show that at least 19 people were killed each month up to June 2017.<sup>45</sup> This wave of witch killings has been condemned by international and national human rights activists. It has been argued that, despite the allegations, very few of these have actually been tried, with the result that it has increased the anxiety levels experienced by elderly women in rural areas.<sup>46</sup>

The patriarchal nature of societies in Tanzania, influenced by colonialism and imperialism, explains why it is women who are the main targets of witch-hunts. The culture of male domination and gender inequality has forced women into the margins in all spheres of life and has increased the magnitude of these harmful practices.<sup>47</sup> The effect of colonisation has resulted in boys being given the opportunity to receive secular education, whereas girls have been marginalised in respect of formal education.<sup>48</sup> The continuation of this trend even after the independence of Tanzania has enabled men to control resources, mostly because of the superior education

<sup>37</sup> Migiro “Despite Murderous Attacks, Tanzania’s ‘Witches’ Fight for Land” (2017-03-21) *Reuters* 1; Kibuga and Dianga 2009 *Southern African Journal of Gerontology* 29–32.

<sup>38</sup> Green 2005 *Anthropological Theory* 248.

<sup>39</sup> Machangu 2015 *Journal of International Women’s Studies* 277.

<sup>40</sup> Oestigaard *Religious at Work in Globalized Tradition: Rainmaking, Witchcraft and Christianity in Tanzania* (2014) 92.

<sup>41</sup> Legal and Human Rights Centre *Bi-Annual Tanzania Human Rights Report* (2017) 9.

<sup>42</sup> Reuters “Tanzania ‘Witch Killings’ Claimed 479 Lives From January–June 2017 Report” (1 August 2017) <https://www.africanews.com/2017/08/01/tanzania-witch-killings-claimed-479-lives-from-january-june-2017-report/> (accessed 2019-01-27).

<sup>43</sup> Make Every Women Count “Human Rights of Women Tanzania: Charges Mob With Killing, Burning Five Witches” (25 August 2017) <http://www.makeeverywomancount.org/index.php/countries/east-africa/tanzania> 1 (accessed 2019-01-18).

<sup>44</sup> *Ibid.*

<sup>45</sup> Legal and Human Rights Centre *Bi-Annual Tanzania Human Rights Report* 12.

<sup>46</sup> Legal and Human Rights “‘Unknown Assailants’: A Threat to Human Rights” *Tanzania Human Rights Report* (2018) 92.

<sup>47</sup> *Ibid.*

<sup>48</sup> Maluleke “Culture, Tradition, Custom, Law and Gender Equality” 2012 15(1) *Potchefstroom Electronic Law Journal* 3.

that they have received, which enables them to secure a higher income from various economic sectors.<sup>49</sup>

As in other parts of the world, witchcraft accusation in Tanzania is a complex issue as it combines customary beliefs with traditional perceptions and legal implications. Consequently, punishing individuals who kill alleged witches creates a conflict between state legal norms and underlying popular beliefs. The act of killing a witch is culturally applauded by the communities that resort to such killings; hence, this complicates the criminalisation of the belief despite the fact that it is not legitimate. The witchcraft belief in Tanzania cuts across all social lines; even though many educated individuals may not believe that witches have all the powers traditionally ascribed to them, many believe in the notion of witchcraft and its existence.<sup>50</sup> Some believe that allegations of witchcraft and the subsequent punishment of suspected witches serve a societal purpose.<sup>51</sup> It is also believed that the threat of witchcraft accusations curbs antisocial behaviour and provides an incentive for people to treat each other well. However, this cannot justify the effect of witchcraft accusations as the phenomenon undoubtedly discriminates against women and has the effect of disenfranchising women within their communities. This therefore begs an examination of the legal initiatives in Tanzania in order to ascertain how effective these have been in attempting to alleviate the problems associated with witchcraft accusation.

#### 4 TANZANIAN LEGISLATION AND WITCHCRAFT PRACTICES

The practice of witchcraft is a criminal offence in many African countries, even though laws pertaining to witchcraft are not always enforced.<sup>52</sup> How this practice is criminalised differs from country to country, depending on its colonial history. Countries such as Benin, Chad, Ivory Coast, Cameroon, Gabon, Mauritania and Mali, which are former French colonies, have banned only the practice of witchcraft.<sup>53</sup> Tanzania and other former British colonies including Kenya, Uganda, Zimbabwe and South Africa use a version of the British Witchcraft Suppression Act,<sup>54</sup> which criminalises not only the practice of witchcraft, but also any claims of involvement in witchcraft or representing oneself as a witch.<sup>55</sup> The Witchcraft Act<sup>56</sup> of Tanzania criminalises witchcraft practices under section 3, while section 4 criminalises the accusation of witchcraft but only when such an accusation has not been made to the proper authorities.

<sup>49</sup> *Ibid.*

<sup>50</sup> Legal and Human Rights Centre *Tanzania Human Rights Report 2013* (2014) 107.

<sup>51</sup> Tebbe 2007 96 *The Georgetown Law Journal* 183–195; United Nations General Assembly “Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania” A/HRC/WG.6/12/TZA/1 (19 July 2011).

<sup>52</sup> Machangu 2015 *Journal of International Women’s Studies* 278.

<sup>53</sup> Cimpric *Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa* (2010) 14.

<sup>54</sup> British Witchcraft Suppression Act (9 Geo. II c. 5) of 1735.

<sup>55</sup> Nkya “Witchcraft Murders Main Cause of Death of Elderly Women” 2012 *Inter Press Service* 1.

<sup>56</sup> The Witchcraft Act Cap. 18 Revised Edition 2002.

The law punishes those who practise witchcraft as well as those who accuse others of practising witchcraft. It does not deal with the challenges resulting from the practice of witchcraft, especially in terms of violations such as the one referred to above. Furthermore, the Witchcraft Act does not provide a clear definition of witchcraft. Section 2 defines witchcraft as including “sorcery, enchantment, bewitching, the use of instruments of witchcraft, and the purported exercise of any occult power and the purported possession of any occult knowledge”. The definition seems to address terms and practices related to the occult and the existence of power rather than the effects of such acts.<sup>57</sup> Consequently, it is difficult to determine what the offences are that relate to the practice of witchcraft.

It is also a challenge to apply certain legal concepts in witchcraft litigation. For instance, in theory, courts are supposed to apply the common-law understanding of the concept of reasonableness in witchcraft cases because witchcraft is a common-law offence. But this has always been extremely difficult to apply in a court of law, as the concept of reasonableness, which is significant in both civil and criminal matters, has different meanings under the common and civil law. While, in terms of the common law, the issue of reasonableness questions whether a respondent has acted in a way that was fair, proper, or moderate, or proper under the circumstances, in civil law systems, the question of reasonableness focuses on ascertaining whether a respondent has acted with reasonable care. There is therefore an enquiry about the degree of care that a sensible and competent person engaged in the same line of business or endeavour would exercise under similar circumstances.<sup>58</sup>

Over the years, Tanzania has relied on the Witchcraft Act, which was enacted in 1928 during the colonial period and which was inherited after its independence. Though the Act has been amended on a number of occasions to cater for changing circumstances such as interpretation, penalties, coverage, jurisdiction of courts and administrators, there are still a number of glaring shortcomings. The repeal of this Act was suggested in 1992 by the presidential commission chaired by Chief Justice Nyalali.<sup>59</sup> However, the Law Reform Commission of Tanzania opposed the recommendations made by the Nyalali Commission based on the fact that the Act abhors the negative impact of such beliefs and practices, including terror and threats that foster disharmony and hatred among the people.<sup>60</sup> It was argued that retaining the Act was essential in order to address the negativity associated with witchcraft. Nevertheless, despite the reasons and motivation submitted for retaining the Act, it is noted that it is rarely used in the prosecution of people accused of engaging in witchcraft.<sup>61</sup>

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<sup>57</sup> Mesaki 2010 *International Journal of Sociology and Anthropology* 133.

<sup>58</sup> Quarmyne 2011 *William & Mary Journal of Women & Law* 475 478.

<sup>59</sup> United Republic of Tanzania: Law Reform Commission *Final Report on Designated Legislation in the Nyalali Commission Report* (1994) 27.

<sup>60</sup> *Ibid.*

<sup>61</sup> Mesaki 2010 *International Journal of Sociology and Anthropology* 133.



## 5 A REFLECTION ON THE APPROACH TO WITCHCRAFT ACCUSATION IN SOUTH AFRICA

Although both men and women practise witchcraft in South Africa, it is said that women are twice as likely to be accused of witchcraft as their male counterparts.<sup>62</sup> As in other jurisdictions, most reported killings of elderly women accused of witchcraft are from rural areas such as the Transkei region, where co-incidentally the highest incidence of lightning fatalities has been reported.<sup>63</sup> What has also been observed is that most of these women are from black homelands where people are generally poor, illiteracy is high, and communication infrastructure is poor.

The significant work undertaken by the South African Law Reform Commission in gauging public opinion on the subject and in reviewing the Witchcraft Suppression Act, is considered here.<sup>64</sup> The mandate of the Commission was to prepare a paper to serve as a basis for the Commission's deliberations, by eliciting responses and suggestions from the relevant stakeholders on matters pertaining to the practice of witchcraft. Among its findings, it was revealed that the practice of witchcraft, magic and a plethora of associated traditions and practices are an expression of the pagan religions. In terms of section 1 of the South Africa Witchcraft Act, it is provided that "any person who (amongst other things) professes to use any supernatural power, or witchcraft, or professes knowledge of witchcraft, shall be guilty of an offence".<sup>65</sup> The argument that has been raised in response to this is that the prohibition in the Act violates "the constitutional rights to religious freedom, expression, equality, liberty, dignity, security and their right to choose and practise their occupation within South Africa".<sup>66</sup>

The prohibition of engaging in divinations is reflected to be contrary to the Constitution of South Africa, as witchcraft is considered to be a religious belief system of the neo pagans in South Africa, and is protected in terms of the South African Constitution.<sup>67</sup> Acclaimed scholars of comparative religions have been critical of the Act, in that it has its origins in colonial administration and administrators who were more concerned about beliefs and superstition. The aim of the Act was to suppress the belief in witchcraft in its entirety.<sup>68</sup> The problem with the implementation of the Act is further exacerbated by the

<sup>62</sup> Green 2005 *Anthropological Theory* 247 249; The Commission of Gender Equality "Witchcraft Roadshows" Unpublished paper Address by the Chairperson at the official launch (Northern Province 18–25 July 2000) 1.

<sup>63</sup> Meel "Gender-Related Traumatic Deaths in Transkei: Incidence and Causes" 2009 9(1) *African Health Sciences* 61; Wojcicki *Sex-Work, Stigma and Violence in the "New" South Africa: An Ethnographic Study of Sex for Money Exchange in Gauteng Province* (doctoral thesis, University of California) 2000 44.

<sup>64</sup> South African Law Reform Commission "Discussion Paper 139: The Review of the Witchcraft Suppression Act 3 of 1957: Project 135" (2016) 5.

<sup>65</sup> S 1 of the Witchcraft Suppression Act 3 of 1957.

<sup>66</sup> By prohibiting the practice of witchcraft, such laws deny citizens their constitutional rights to religious freedom (s 15); the right to freedom of expression (s 16); equality (s 9); human dignity (s 10); freedom and security of the person (s 12); and their right to choose their trade, occupation or profession freely within South Africa (s 22).

<sup>67</sup> Penton "SA Law Reform Commission Finds Witchcraft Suppression Act Unconstitutional" 2016 *Penton Independent Alternative Media* 1.

<sup>68</sup> *Ibid.*

absence of a constructive definition of “witchcraft”, which has led to the association of witchcraft with malicious practices such as the alleged inflicting of illness, misfortune and death, together with some of the conduct that is proscribed by the Act. The provisions in subparagraphs (d) and (f) of section 1 of the Act, which criminalises the conduct of a person who professes to have knowledge of witchcraft and who, for gain, pretends to exercise or use any supernatural power, are problematic as they target both indigenous practices and practitioners.

The South African Law Commission has acknowledged that issues that surround witchcraft are complex and the consequences related to the practice of witchcraft, the violence associated with witchcraft, together with prevailing conflicting ideas about the existence of other forms of witchcraft, are quite dire. The appeal for an appreciation of the distinction between witchcraft as a harmful practice and witchcraft as a form of religious practice by self-identified witches has been raised by several stakeholders.<sup>69</sup> The violence associated with witchcraft is experienced by communities in both urban and rural areas in South Africa. It is observed that the individuals most affected by the practices associated with harmful witchcraft are vulnerable and require the most protection in law.

## **6 PROPOSALS TO ALLEVIATE THE PROBLEMS EXPERIENCED IN TANZANIA**

Reflecting on the stance maintained by the South African Law Commission, it is obvious that there are practical and workable solutions that have been identified in the South African context that may be considered in response to the problems experienced in Tanzania emanating from witchcraft accusation. These are dealt with *in seriatim* below.

- (a) As in South Africa, the main challenge in Tanzania due to the extensive practice of witchcraft as illustrated above, lies in the balancing of the interests of people who practise witchcraft and those who are the unfortunate victims having to endure or suffer the harmful consequences usually associated with witchcraft practices.<sup>70</sup> The South African Law Commission, in attempting to address this problem, has recognised the need to promote and protect the rights of individuals that are contained in the Bill of Rights.<sup>71</sup> What is important here is that the issues that arise from witchcraft accusations are regarded as constitutional issues and are treated as such. It is therefore suggested that this also needs to be considered as a way forward in addressing the problem in Tanzania. The Tanzanian Constitution, as the law of the highest authority in the country, should be more instrumental in protecting the rights of persons who engage in such practices. The law should be viewed as a main tool to transform the legal and social setting in this regard and to send out a message to society that the negative practices associated with witchcraft accusation are a violation of human rights and that they will not be tolerated.

<sup>69</sup> South African Law Reform Commission “Discussion Paper 139” 5.

<sup>70</sup> South African Law Reform Commission “Discussion Paper 139” 87.

<sup>71</sup> *Ibid.*

- (b) An important aspect highlighted by the South African Law Commission is what has been referred to as “positive witchcraft”, in terms of which individuals are positively identified as witches. In so doing, it gives recognition to witchcraft as a religious practice. This is significant in that section 31 of the South African Constitution protects the rights of cultural, religious and linguistic communities. An outlawing of the practice of witchcraft will thus amount to a violation of a constitutional right.<sup>72</sup> Apart from section 31, there is also a “potential claim” for discrimination in terms of section 9 on the grounds of conscience, belief and culture.<sup>73</sup> It has been observed that since witchcraft is often associated with women, persecution of witches can very well give rise to a claim of discrimination on the grounds of sex or gender. The witchcraft issue in Tanzania should be accorded a similar severity, and all persons should be made aware of the repercussions when taking matters into their own hands, which is a frequent occurrence in Tanzania. Moreover, the education of women must be encouraged because women generally have to succumb to a more subordinate position in society. As a result, there needs to be a concerted effort to sensitise communities with regard to witchcraft-related issues and their rights in this regard. Adopting the approach that witchcraft practices are a cultural right may encourage people to abandon the negativity associated with witchcraft.
- (c) It is also essential to understand why the idea of evil witchcraft is so real to some people, to the extent that they would kill and harm persons suspected of witchcraft. The value of a critical examination of issues and the questioning of magical narratives that fuel suspicions and accusations of witchcraft should be considered at all levels and by all communities, not necessarily only rural communities. What is therefore proposed here are programmes and public enlightenment campaigns in Tanzania to educate communities that using witchcraft to harm others – whether actual physical or psychological harm – is not only distressful to other individuals but may be regarded as being contrary to law. The South African Law Commission has taken the view that harmful practices associated with witchcraft are to be criminalised.<sup>74</sup> Likewise, the stance of the South African Law Commission can be emulated in this respect. However, what must be clear is that it is the intentional use of such practices to harm others that should be targeted and not the practice of witchcraft itself. State action to criminalise thus needs to be based on clear evidence of intentional harm on the part of the perpetrator.<sup>75</sup> Preferably at a tender school-going age, Tanzanians should be made aware of the misconceptions associated with witchcraft beliefs. People entertain witchcraft notions because they fear the unknown and that which is inexplicable.<sup>76</sup> Therefore it would seem that the suspicion of witchcraft can be ascribed mainly to ignorance, which

<sup>72</sup> South African Law Reform Commission “Discussion Paper 139” 67.

<sup>73</sup> *Ibid.*

<sup>74</sup> South African Law Reform Commission “Discussion Paper 139” 68; Bähre “Witchcraft and the Exchange of Sex, Blood, and Money Among Africans in Cape Town South Africa” 2002 32(3) *Journal of Religion in Africa* 300.

<sup>75</sup> South African Law Reform Commission “Discussion Paper 139” 70.

<sup>76</sup> Igwe “Tackling Witch-Hunts in Tanzania: A Proactive Approach” 2014 *James Randi Educational Foundation* 1.

grassroots educational programmes may prove crucial in helping to eradicate.

- (d) Finally, the practice of witchcraft must no longer be seen “through the lens of indigenous communities”.<sup>77</sup> The notion that it is practised only by women in rural communities is an archaic and stereotypical fallacy that must be dispelled. Education is regarded as the key component in helping people understand the physiological symptoms of diseases such as AIDS and other terminal illnesses, rather than associating everything that is negative with witchcraft as the cause. The misconception that witchcraft is an African form of “science” has to be rectified. It needs to be understood among Tanzanians that the practice of witchcraft is not to be regarded as a sinister or taboo practice since what it really equates to is “the exercise of the right to a religion”,<sup>78</sup> and should therefore be accorded the relevant and appropriate status.

## 7 CONCLUSION

This article illustrates that witchcraft accusation does not only constitute an ideology, but that it is a gendered ideology. It is a gender-specific form of violence that targets mostly women. There is a direct relationship between women and the stereotype of witchcraft as it is predominantly women who are regarded as being witches. It therefore follows that all women are perceived as potential witches. This idea implies that, it is specifically men who benefit from such a stereotypical direct association. The article has emphasised that witchcraft accusations are practised mostly in societies that are deeply entrenched patriarchy systems holding traditional cultural, religious and customary values and propagated by men who benefit from them. The male-dominated power that allows men to identify and decide on the fate of “witches” perpetuates the beliefs in the matrilineal inheritance of witchcraft practices and leads to the further targeting of women as witches.

Despite national legislation that attempts to guarantee women’s rights, women in Tanzania and Africa at large continue to face discrimination and abuse of their fundamental rights owing to witchcraft accusation practices. The authors submit that the fundamental rights that are embodied in the constitutions of African countries, and which uphold rights to equality, non-discrimination and freedom from inhumane treatment practices, must be viewed with the intention to uphold and protect the rights of the most vulnerable members in society – namely, women who find themselves in this predicament. The South African Constitution with its state-of-the-art Bill of Rights is most noteworthy in this respect. It is therefore maintained that the essence of the work undertaken by the South African Law Commission in reviewing the Witchcraft Suppression Act, and which encapsulates the fundamental rights of the Constitution at the core of its discussion, must be considered by the Tanzanian Law Reform Commission and adapted to provide a solution to this gender violence phenomenon experienced in Tanzania.

<sup>77</sup> Igwe 2014 *James Randi Educational Foundation* 83.

<sup>78</sup> *Ibid.*